THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.18557 of 2006

Date 23.10.2007

Between:
Polisetti Madhav Rao.

..... PETITIONER

AND

The Govt. of A.P., Home, (Genl.C) Department, Secretariat Building, Hyderabad rep. By its Secretary and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.18557 of 2006

ORDER:

The petitioner challenges the validity of an order passed by the Commissioner of Police and Additional District Magistrate, Visakhapatnam City, revoking the Arms Licence bearing No.105/92/VSP granted to the petitioner in exercise of the power available to him under Section 17(3)(b) of the Arms Act, 1959 (hereinafter referred to as "the Act").

The learned counsel for the petitioner, Sri O.Manoher Reddy, would urge that the petitioner hails from a decent family living in Visakhapatnam City from very very long time and by his very avocation, he has to move around with lot of valuables and consequently he was exposed to the risk of being attacked and, therefore, in those set of circumstances, he applied for a licence to hold a fire arm and considering the same, the Commissioner of Police granted him the licence on 27-12-1992. In terms of this licence, the petitioner has acquired the firearm and has been maintaining the necessary records properly. But, however, on the plea that Crime No.490/2005 has been registered against the petitioner by the IV Town Police Station, Visakhapatnam, the licence granted in his favour has been revoked by the Commissioner and while passing such an order, the Commissioner of Police has acted in a mechanical manner without recording reasons for his action nor did provide an opportunity to the petitioner to set forth his defence. The learned counsel would also urge that since there was no bad history recorded against the petitioner any time prior to the impugned order being passed, the Commissioner of Police could have provided an opportunity to the petitioner to explain the adverse circumstances

which have been reported against him, in as much as the petitioner is not, in fact, guilty of the allegations of misdemeanor levelled against him which lead to the registration of Crime No.490/2005.

Per contra, the learned Government Pleader would urge that in all other circumstances where the situation warrants, a prior opportunity of hearing could have been provided by the Commissioner of Police, but, however, in the instant case, since a crime has been specifically reported against the petitioner alleging that he has brandished his fire arm in a threatening posture, it is no longer safe in public interest to allow him to carry the fire arm. Therefore, the learned Government Pleader would urge that exercise of power under sub-section (3) of Section 17 of the Act is a bona fide and legitimate exercise of power which does not warrant interference by this Court.

It will be appropriate to quote the provision contained in Section 17 of the Act.

Variation, suspension and revocation of licences:

(1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence-holder by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence—

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to

suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying a licence under sub-section(1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.

(7) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(8) An order of suspension or revocation under sub-section (7) may also be made by an appellate Court or by the High Court when exercising its powers of revision.

(9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.

(10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

A perusal of the above Section would disclose that the licensing authority may by order in writing suspend the licence for such period as it thinks fit or revoke a licence, if the authority deems it necessary for the security of public peace or for public safety. Therefore, it presupposes the existence of such material against the licencee which can clearly satisfy the licencing authority that the security of public peace and public safety require suspension or revocation of the licence granted. The rationale behind this requirement is obvious. Unless the licensing authority is satisfied about the genuineness of the claim for holding a fire arm, no such licence is liable to be granted at the first instance. Therefore, before either suspending or revoking such a licence granted, the factors that tend to threaten the public safety or attempted breach of public peace are needed and such factors need to be reflected from the order passed in writing by the licensing authority.

The statute not only required the licensing authority to pass an order in writing but also required him to deem it necessary to suspend or revoke the license. Such requirement for revocation or suspension has got to be for securing the public peace or security and not for any other reasons. The impugned order passed by the Commissioner of Police, Visakhapatnam City reads in its entirety as under:

> "Under the circumstances stated by the S.H.O., IV Town P.S., Visakhapatnam City, in his report read above, as per Section 17(3)(b) of the Arms Act, 1959, the Arms Licence bearing No.105/92/VSP, which is valid up to 31-12-2007, covering two weapons i.e., (1) One 0.32 Revolver bearing No.1304348, made in Germany, and (2) One DBBL Gun bearing No.LUTN 322, 12X70-6ym-T03-34P, made in Russia, in respect of Sri P.Madhava Rao, resident of Daspalla Hills, Visakhapatnam City, is hereby revoked, as he is involved in a criminal case vide Cr.No.490/2005, u/s 451, 306 IPC and Section 3 r/w 30 of Arms Act, of IV Town P.S., Visakhapatnam.
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> The S.H.O., III Town P.S., Visakhapatnam City is hereby directed to seize the above weapons and deposit them at CAR, Visakhapatnam City under intimation to this office. The seized

Arms Licence Book may also be sent to this office for record."

It clearly discloses that as certain adverse circumstances had been reported against the petitioner by the Station House Officer, IV Town Police Station, Visakhapatnam City, the Commissioner of Police has invoked the power under Section 17(3) of the Act. The order in so many words does not disclose or record the satisfaction of the Commissioner of Police that the conduct of the petitioner was such that which can threaten the tranquility and public peace and that it poses danger to the public safety. In those set of circumstances, the order passed by the Commissioner of Police requires reconsideration. Even in cases where the power under Section 17(3) is urgently needed to prevent further deterioration of public peace and tranquility, a post-decisional hearing has got to be accorded. If the Commissioner of Police, being the licensing authority, is satisfied that the procedural requirement of a pre-decisional hearing is likely to threaten or cause a further deterioration of the public safety or security, even if he had invoked the power under Section 17(3) of the Act, the same is liable to be followed up by a
prompt post-decisional hearing treating the decision as purely provisional in nature and character.

I, therefore, consider it appropriate to direct the second respondent to reconsider the entire matter by providing an opportunity of hearing to the petitioner. The decision contained in the impugned order will be treated as purely provisional in nature and character. He will make an appropriate assessment of the threatened breach of public peace or public safety and he would also make an assessment of the threat perception in the absence of a fire arm being available with the petitioner and taking all the relevant factors into account, he will decide the question as to whether the power available to him under sub-section (3) of Section 17 of the Act should be invoked or not. I, therefore, direct the Commissioner to give a fresh consideration to the entire matter duly providing an opportunity of

hearing to the petitioner and take a decision, informed of reasons, and communicate the same to the petitioner within a period of three months.

With this direction, the writ petition stands disposed of. No order as to costs.

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23 -10-2007

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